

**BOARD OF GAME AND INLAND FISHERIES MEETING MINUTES
4000 WEST BROAD STREET
RICHMOND, VIRGINIA**

AUGUST 19, 2004, 9:00 a.m.

PRESENT: Daniel A. Hoffler, Chairman, C. Marshall Davison, John W. Montgomery, Jr., Richard E. Railey, Jr., Sherry S. Crumley, Randy J. Kozuch, Charles S. Yates, Cecil T. Campbell, James W. Hazel; **ABSENT:** Jack T. Shoosmith, personal illness, C. Will McNeely, family commitment; **DIRECTOR:** William L. Woodfin, Jr., **LEGAL COUNSEL,** Roger Chaffe, **SENIOR STAFF:** Ray Davis, Bob Duncan, Herb Foster, Gary Martel, Jeff Uerz, David Whitehurst

Chairman Hoffler called the meeting to order at 9:00 a.m. A moment of silence was observed in memory of Board member Richard E. Railey, Jr.'s father, Richard E. Railey, Sr. who has recently passed away. Recent Board appointees Randy J. Kozuch, representing the Eighth Congressional District, Charles S. Yates, representing the Ninth Congressional District and James W. Hazel, representing the Eleventh Congressional District were introduced. On behalf of the full Board, Chairman Hoffler thanked retiring Board members Richard Corrigan, Dan McCoy and Charles Cunningham for their service. Jeff Uerz was requested to lead the Pledge of Allegiance to the Flag.

1. Closed Session: At 9:05 a.m., Ms. Crumley moved, seconded by Mr. Campbell, passed unanimously (ayes Crumley, Campbell, Davison, Montgomery, Railey, Kozuch, Yates, and Hazel), that the Board go into a closed meeting pursuant to § 2.2-3711.A.1 of the Code of Virginia for discussion or consideration of employment, assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public officers, appointees or employees of the Department of Game and Inland Fisheries specially regarding the Director's annual performance plan.

At 9:20 a.m., Ms. Crumley certified, seconded by Mr. Montgomery, passed unanimously (ayes Crumley, Montgomery, Davison, Railey, Kozuch, Yates, Campbell and Hazel) that whereas the Board of Game and Inland Fisheries had convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act, and whereas § 2.2-3712.D of the Code requires a certification by this Board that such closed meeting was conducted in conformity with Virginia law; now, therefore, be it resolved, that the Board of Game and Inland Fisheries hereby certifies that (i) to the best of each member's knowledge, only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Board.

2. Public Comment, Non-Agenda Items: Lee Albright, Montebello, VA. Mr. Albright stated that his primary purpose for addressing the Board at this meeting was to urge the Board and the

Department to address all issues raised (during the public comment period) fully, candidly and professionally.

Dean Miller, Colonial Heights, VA spoke in support of the new “Got Game” program.

3. Recognition of Employees: David Whitehurst presented an ACI (Association of Conservation Information) third place award to Ron Messina and Mel White for a public service announcement they did that involved Jon Jansen of the Redskins. The announcement focused on hunter safety.

Becky Wajda, Jeff Trollinger, Lenée Harner, Lou Verner and Mary Beth Murr were recognized for receiving a special achievement ACI award for a full color publication (the Mountain Trail Guide for the Virginia Birding and Wildlife Trail). Board members congratulated these employees for their outstanding work.

Mr. Woodfin announced that the Department’s Game Warden Training Academy has received full certification from the Department of Criminal Justice Services. Savings will be realized by the Department when it conducts its own training and fully trained officers will be available much sooner for fieldwork. Herb Foster recognized Lt. Scott Naff, Sgt. Milt Robinson, and Dianne Davis for the work they have performed to obtain the DCJS certification and to get the training academy established in time for its first class consisting of 17 recruits. Classes will begin September 10, 2004. These recruits will graduate from the Academy in April 2005. The training academy and the required library have been established in existing office space owned by the Department and located in Richmond. Department employees will be the primary instructors for the academy.

4. Minutes of Meeting. Draft minutes of the June 25, 2004 meeting have been posted on the Department’s website and copies were included in the briefing materials provided to each Board member. Chairman Hoffler called for any additions or corrections to the minutes. As there were none, **Mr. Montgomery moved, seconded by Mr. Davison, passed unanimously, (Montgomery, Crumley, Davison, Railey, Kozuch, Yates, Campbell and Hazel) that the minutes be approved as written.**

5. Migratory Waterfowl Seasons: Bob Duncan presented the following federal framework and staff recommendations for the 2004-2005 migratory waterfowl seasons. Department staff held a public input meeting on August 10, and the attendees supported staff recommendations for season dates and bag limits. The final federal framework will not be available until the end of September 2004. The framework and staff recommendations have been posted on the Department’s website for public review.

Federal Framework—General Duck Season: The framework allows for a three-way split season with no zones. The outside dates for general duck seasons are September 25, 2004 through January 30, 2005, with a season of no more than 60 hunting days plus a consecutive, two-day youth waterfowl hunt, with a daily bag limit of 6 ducks, and may include no more than 4 mallards (only 2 of which may be hen mallards), 3 scaup, 4 scoters, 2 wood ducks, 2 redheads, 1 black duck, 1 mottled duck, 1 fulvous whistling duck, 1 pintail for up to 30 days, 1 canvasback

for up to 30 days. The possession limit is twice the daily bag limit. The season is closed on Harlequin ducks. Shooting hours is one-half hour before sunrise until sunset daily.

Special Sea Duck Season (in sea duck zone), Scoter, Long-Tailed Duck, and Eider: A 107-hunting day season is allowed between September 15, 2004 and January 30, 2005, with a bag limit of 7 birds daily (14 in possession), but may include no more than 4 scoters (8 in possession).

Coot, Merganser, Gallinule and Moorhen: Coot: The framework allows a 60- hunting day season between September 27, 2004 and January 30, 2005, with a bag limit of 15 birds daily (30 in possession).

Merganser: The framework allows for a 60-hunting-day season between September 27, 2004 and January 30, 2005, with a bag limit of 5 birds daily, one 1 of which may be a hooded merganser (10 in possession, only 2 of which may be hooded mergansers).

Gallinule/Moorhen: The framework allows for a 70-hunting-day season between September 1, 2004 and January 20, 2005, with a bag limit of 15 daily (30 in possession).

Canada Goose (Western Zone): The regular season, of up to 40 hunting days, may be held between November 15, 2004 and January 14, 2005. The extended season dates are January 15 through February 15, 2005. The bag limit is 2 per day through January 14, 5 per day from January 15 through February 15.

Atlantic Population Zone (Back Bay Closed): A two way split season, up to 45 hunting days, may be held between November 15, 2004 and January 31, 2005. The bag limit is 1 per day for 25 days, 2 per day for 20 days after December 31, 2004.

Snow Goose and Atlantic Brant Seasons: Snow Goose: A three-way split season is allowed, up to 107 hunting days, between October 1, 2004 and March 10, 2005, with a bag limit of 15 birds daily (no possession limit).

Atlantic Brant: States may select seasons of up to 50 hunting days between September 27, 2004 through January 31, 2005, with a bag limit of 2 birds daily (4 in possession).

Tundra Swan Season: Virginia's Department of Game and Inland Fisheries may issue no more than 600 permits to participants, and the state must obtain harvest and hunter participation data. A 90-day hunting season may be selected between October 1, 2004 and January 31, 2005, with a bag limit of one bird per permittee per season. Permit conditions must be observed by permittees.

Falconry: The framework provides for a 107 hawking day season, not to exceed three segments in any extended season outside the regulation season, between September 1, 2004 and March 10, 2005. The bag limit is 3 daily (6 in possession). Federal Law prohibits falconry for waterfowl on Sunday.

Staff Recommendations: General Duck Seasons: Staff recommended a 60-hunting day season, plus 1 youth waterfowl hunting day. The first segment is October 7-11 (black duck, pintail and canvasback closed). The Youth Waterfowl Hunting Day is October 23. The second segment is November 20-December 4, 2004, and the third segment is December 11, 2004 through January 29, 2005 (canvasback and pintail open only December 27, 2004 through January 29, 2005). The daily bag limit is 5 ducks, which may include no more than 4 mallards (which may include no more than 2 hen mallards), 3 scaup, 4 scoters, 2 wood ducks, 2 redheads, 1 mottled duck, 1 fulvous whistling duck, 1 black duck (except closed during October 7-11), 1 canvasback, 1 pintail (during open season December 27, 2004 through January 29, 2005). The season is closed on Harlequin duck. The possession limit is twice the daily bag limit. A bag limit of two birds per day was recommended for youth participating in the youth waterfowl hunting day on October 23.

Special Sea Duck Season: (Scoter, long-tailed duck, and eider): The proposed season dates were October 7, 2004 through January 29, 2005, with a bag limit of 7 birds daily (14 in possession) but may include no more than 4 scoters (8 in possession).

Coot, Merganser, Gallinule and Moorhen seasons: Coot: Staff recommended that the coot season coincide with the general duck season, with a bag limit of 15 birds daily (30 in possession).

Merganser: Staff recommended that the merganser season coincide with the general duck season, with a bag limit of 5 daily, only 1 of which may be a hooded merganser (10 in possession, only 2 of which may be hooded mergansers).

Gallinule/Moorhen: A three-way split season was recommended (October 7-11, 2004, November 20 through December 4, 2004 and December 11, 2004 through January 20, 2005) with a bag limit of 15 daily (30 in possession).

Canada Goose Season, western zone: A two-way regular season was recommended (November 20-December 4, 2004, December 15, 2004 through January 14, 2005). The extended season dates are January 15-February 15, 2005. The bag limit is 2 geese per day from November 20 through December 4, 2004 and December 15, 2004 through January 14, 2005. The bag limit is 5 geese per day from January 15 through February 15.

Atlantic Population Zone (Back Bay Closed): Proposed season dates were November 20 through December 4, 2004 and December 24, 2004 through January 29, 2005, with a bag limit of 1 goose per day from November 20 through December 4 and December 24, 2004 through January 6, 2005. Two geese per day from January 7 through January 29, 2005.

Snow Goose and Atlantic Brant Seasons: Snow Goose: A 107 hunting-day season was recommended, opening November 6, 2004 and closing March 10, 2005, with a bag limit of 15 birds daily (no possession limit).

Atlantic Brant season dates recommended (50 hunting days) are November 20-27, 2004 and December 11, 2004 through January 29, 2005, with a bag limit of 2 birds daily (4 in possession).

Tundra Swan: Season dates recommended are December 1, 2004 through January 31, 2005. The hunt area is all counties and portions of counties lying east of U.S. Route I-95 and south of the Prince William/Stafford County line in Chopawamsic Creek at Quantico Marine Corps Base. The Department of Game and Inland Fisheries may issue no more than 600 permits to holders of valid Virginia hunting licenses. The bag limit is 1 bird per permittee. All permit conditions must be obeyed.

Falconry: Staff recommended a season of 107 hawking days, with no combination of falconry and firearms hunting to exceed 107 days for any species. The bag limit is 3 daily. Season dates will coincide with other migratory waterfowl seasons for Virginia.

Ducks, Mergansers, Coots, Moorhens and Gallinules: Season dates of October 7-11 and November 20, 2004 through February 28, 2005 were recommended.

Canada Goose season dates recommended are November 20, 2004 through February 19, 2005.

Brant and Snow Goose season dates recommended are November 6, 2004 through March 10, 2005.

There were no requests received from the public to comment on the migratory waterfowl seasons and bag limits.

Mr. Railey moved, seconded by Mr. Montgomery, passed unanimously (ayes Railey, Montgomery, Davison, Crumley, Kozuch, Yates, Campbell and Hazel) the adoption of the proposed waterfowl seasons and bag limits as presented by staff, and the Director was authorized to make any necessary changes needed to accommodate the requirements of the final federal framework.

6. Land Lease Fee: Bob Duncan presented, for final action, an amendment, as advertised as a result of Board action on June 25, 2004, to **4 VAC 15-40-280** to establish the requirement for an annual hunting stamp, (will also be required for anglers and wildlife watchers) with the cost to correspond to that of an annual state resident hunting license, to hunt on private lands managed by the Department through a lease agreement or similar memorandum of understanding. The annual hunting stamp is required in addition to all required hunting licenses.

No requests were received from the public to comment on this regulation amendment.

Mr. Yates moved, seconded by Mr. Davison, passed unanimously (ayes: Yates, Davison, Montgomery, Railey, Crumley, Kozuch, Campbell and Hazel) that the Board adopt, as advertised, the amendment to 4 VAC 15-40-280 to establish an annual access stamp requirement for those entering lands leased or managed by the Department for hunting, fishing or wildlife watching.

7. Visitor Fees to Agency-Owned Fish Hatcheries: Gary Martel presented an

amendment to **4 VAC 15-320-100**, as authorized by the 2004 budget bill and as advertised as a result of Board action on June 25, 2004, to establish a \$1.00 per visitor fee to Department-owned hatcheries to provide for visitor access and to offset the cost of supervising visitors at these facilities. Two of the Department's nine hatcheries are in federal ownership.

Mr. Martel indicated that the Department-owned hatcheries were reopened to public visitation in April 2004, when staff became aware of the budget bill language. Staff estimated that approximately 7,000 visitors have gone to these facilities since that time. The April-May count was 1,800 to Montebello, 500 to Marion, 300 to Coursey Springs, 250 to Wytheville and 500 to Paint Bank. The Wytheville and Paint Bank Hatcheries are the federal facilities.

There were no requests received from the public to comment on this regulatory action.

Ms. Crumley moved, seconded by Mr. Hazel, passed unanimously (ayes: Crumley, Hazel, Davison, Montgomery, Railey, Kozuch, Yates and Campbell) that the Board adopt, as advertised, the amendment to 4 VAC 15-320-100 to establish a \$1.00 fee per visitor to apply to all visitors to department-owned fish hatcheries. The effective date for this regulation amendment will be September 20, 2004.

8. Board Meeting Schedule for 2005. A proposed meeting schedule for 2005 was provided to each Board member with the meeting briefing materials. Chairman Hoffler provided an opportunity for members to discuss the proposed schedule. **Mr. Hazel moved, seconded by Mr. Davison, passed unanimously, (ayes Hazel, Davison, Montgomery, Railey, Crumley, Kozuch, Yates, Campbell) that the 2005 Board meetings will be held March 31, June 23, August 18 and October 27.**

9. Vehicle Use on Department-Owned Lands. Ray Davis presented a proposed amendment to **4 VAC 15-20-100**, as requested by the U. S. Department of Interior to bring the Department's regulation in compliance with the requirements of the Americans with Disabilities Act of 1990. The amendment clarifies that a motorized wheelchair suitable for use in an indoor pedestrian area is not considered a motorized vehicle, and therefore is not covered by any restrictions on the use of motorized vehicles on department-owned lands. The U. S. Department of Interior recommended the language presented to the Board for consideration.

There were no requests received from the public to comment on this proposed regulatory action. **Ms. Crumley moved, seconded by Mr. Montgomery, passed unanimously, (ayes, Crumley, Montgomery, Davison, Railey, Kozuch, Yates, Campbell and Hazel) that the Board approve for advertisement the regulation proposal that will clarify that a motorized wheelchair is not the same as a motorized vehicle and that the Board delegate to the Director the authority to approve the final regulation, without further Board action, once the 30-day public comment period closes.**

10. Pinnacles Hydroelectric Conservation Easement. Ray Davis presented a request to release 24.3 acres in Patrick County to allow the City of Danville to exchange the property with Primm Timber Incorporated for land better suited to stage repairs to the Pinnacles Hydroelectric facility (a 32.37-acre parcel). The Board will have the option of receiving a

conservation easement on the 32.37-acre parcel. The Board release of the property will be subject to FERC approval.

No requests were received from the public to comment on this requested action.

Mr. Montgomery moved, seconded by Ms. Crumley, passed unanimously (ayes: Montgomery, Crumley, Davison, Railey, Kozuch, Yates, Campbell and Hazel) that the Director be authorized to sign on behalf of the Board to finalize the requested release of 24.3 acres from the Pinnacles Hydroelectric Conservation Easement, subject to FERC approval, to allow the City of Danville to exchange 32.37 acres with Primitimer Incorporated to provide a better staging area for the Pinnacles Hydroelectric facility.

Ray Davis indicated that two requests have been received from license agent applicants to be exempted from the Board policy requirement for a \$2,000 deposit for new license agents. He asked, and the Board granted staff the necessary authority to deal with these requests administratively.

11. FOIA and COIA Briefing. Legal counsel, Roger Chaffe, presented the annual briefing for Board members, as required by these two Acts. A copy of the Freedom of Information Act (FOIC) was provided to each Board member with the meeting briefing materials. Mr. Chaffe reminded Board members that all meetings and records are open to the public, with the exception of personnel, legal advice and real estate transactions that may be conducted in closed session and are exempted from the public disclosure requirement. Boards are required by the Act to certify in public session that only those items identified in the convening motion were heard and/or discussed in the relevant closed session.

Legal counsel advised Board members to immediately contact the agency director should they personally receive an FOIA request for information. A five-day response is required for FOIA requests, unless an extension is requested. The receiver of an FOIA request may decline to furnish the requested information, in full, if the provisions of the Act are cited, or a portion of the requested information may be provided. Again, an explanation is required as to why all requested materials are not being furnished.

Board members were advised that as a member of this Board, they are covered by the requirements of the Conflict of Interests Act, and they were advised that they may abstain from voting on any issue where a potential conflict may exist. Members may not accept gifts and/or favors. They may not enter into any contracts and/or transactions with the agency where there is a financial action and contracts with other agencies can only be secured through open bids.

12. Director's Report. Mr. Woodfin reported that as authorized by the Board at its June 25, 2004 meeting, final action has been taken on the regulation amendment conforming our definition of a stationary blind to state code and also defining a floating blind.

The final phase of the statewide Birding and Wildlife Trail will be dedicated at Monticello on September 30, 2004. Virginia is the first state in the United States that will have a statewide birding and wildlife trail. Board members will receive an invitation to the dedication ceremony.

Construction delays continue on the Marion office building. We continue to work with the contractor and the bonding company in an effort to resolve the issues and successfully complete the project. Hopefully, the project will be completed in October 2004.

Director Woodfin discussed the concept of conducting a planning session with the Board during the scheduled October 21, 2004 meeting to develop some long-range strategies for programs and objectives.

Chairman Hoffler invited the Board to hold its scheduled meeting at his office headquarters in Virginia Beach. Board member were encouraged to plan to arrive in Virginia Beach for a dinner on October 20, with the meeting on October 21 being dedicated to developing long range plans for the agency. The public is welcomed to attend that meeting.

Mr. Montgomery moved, seconded by Mr. Davison, passed unanimously, to change the location of the scheduled October 21, 2004 Board of Game and Inland Fisheries meeting to Virginia Beach. (Ayes: Montgomery, Davison, Railey, Crumley, Kozuch, Yates, Campbell and Hazel)

Bob Eric and Johnny Grace, representing Parker Bows, were recognized. Mr. Eric commented on the merits of the crossbow. He indicated that the Archery Association recognizes a crossbow as archery equipment, and stated that it is a safe tool. Approximately six states do not have crossbow seasons. Crossbows are only allowed for hunting in Virginia by those who have a physician's certification that they are unable to use traditional archery equipment. The Board was advised that the restricted use of the crossbow is defined by State Code, not a Board regulation.

Following the meeting, Mr. Eric and Mr. Grace provided a crossbow demonstration for the Board members.

Adjournment: Mr. Hoffler announced that the next meeting of the Board will be October 21, 2004 in Virginia Beach. As there was no further business, the meeting was adjourned at 10:50 a.m.

Respectfully submitted,

Belle Harding
Secretary to the Director